

MOUNTAIN STATES TELEPHONE AND TELEGRAPH CO.

IBLA 87-695

Decided June 8, 1989

Appeal from a decision of the Area Manager, Grand Junction Resource Area, Colorado, Bureau of Land Management, requiring payment of reappraised annual rental for communications site right-of-way C-16991.

Set aside and remanded.

1. Appraisals--Communication Sites--Rights-of-Way: Act of March 4, 1911--Rights-of-Way: Appraisals

An appraisal of the fair market rental value of a right-of-way for a communications site may be set aside and remanded where the appraisal report provides insufficient data on leases compared and insufficient analysis of the differences and similarities between the comparable leases and the subject lease to support the appraisal.

APPEARANCES: Bruce G. Smith, Esq., Mountain States Telephone and Telegraph Company, Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Mountain States Telephone and Telegraph Company (Mountain States) appeals from a decision of the Area Manager, Grand Junction Resource Area, Colorado, Bureau of Land Management (BLM), dated June 12, 1987, requiring the payment of a reappraised annual rental for communications site right-of-way C-16991.

By decision dated August 21, 1973 (effective Aug. 17, 1973), BLM granted right-of-way C-16991, for a term of 50 years, pursuant to the Act of March 4, 1911, as amended, 43 U.S.C. § 961 (1976) (repealed effective Oct. 21, 1976, by section 706(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), P.L. 94-579, 90 Stat. 2793 (1976)). The right-of-way issued for a microwave repeater site and access road situated in the NE¹/₄ SW¹/₄, sec. 15, T. 11 S., R. 97 W., sixth principal meridian, Mesa County, Colorado.

Subsequently, BLM approved two amendments of the right-of-way which were issued pursuant to Title V of FLPMA, 43 U.S.C. §§ 1761-1771 (1982), on January 3 and June 28, 1985. The amendment of January 3, 1985, authorized the construction, operation, maintenance, and termination of the facilities shown on the official approved right-of-way map dated December 22, 1980,

and also authorized the existing frequencies operated from this repeater station. The amendment of June 28, 1985, authorized the installation of digital radio equipment at the existing facility.

By decision dated June 9, 1976, BLM set the rental for the right-of-way at \$1,400 annually for the period beginning August 17, 1973, and ending December 31, 1980. This decision was vacated by BLM's decision of October 29, 1982, which determined the proper annual rental for the initial period to be \$1,000. 1/ This holding was based on a finding that the fair market rental value for the right-of-way was \$1,000 per year for the period commencing August 17, 1973, and ending August 16, 1983.

By memorandum dated October 15, 1986, BLM appraiser Bud Curtis notified the Grand Junction District Manager that the estimated annual fair market value for right-of-way C-16991 from August 17, 1987, through August 16, 1992, was \$1,500. Curtis explained that this memorandum provided a supplement to the Colorado Telecommunications Use Appraisal (CTUA) or Master Appraisal dated August 7, 1986, and approved September 29, 1986. Curtis noted that the use of appellant's right-of-way is for a common carrier microwave relay as described on page 26 of the CTUA. Curtis certified that he had examined the subject use authorization and that the amount indicated, \$1,500 per year, represents his best unbiased judgment as to the current fair market rental for the rights of use granted.

Attached to the CTUA which is part of the record is a September 29, 1986, memorandum from the Chief State Appraiser to the State Director, Colorado, summarizing the results of the CTUA and approving the report. In that memorandum, the Chief State Appraiser stated that the appraisal covered all rural rights-of-way issued for telecommunications use pursuant to Title V of FLPMA, and determined the fair market rental value thereof as of August 7, 1986. He noted that telecommunications-use rights-of-way had been grouped into six "essentially homogeneous" use categories and then compared with comparable "non-federal verified lease transactions," focusing on the "mid-range of the data." The Chief State Appraiser concluded that the data could be interpreted in various ways, but that the value determinations in the appraisal were "supported by the majority of the market evidence." Each category of telecommunications use was assigned an estimated annual fair market rental value amount. 2/

1/ In its Oct. 29, 1982, decision BLM explained that in September 1980, it reviewed the initial appraisal upon which the \$1,400 annual rental figure was based and determined that the fair market value of the right-of-way for the initial period was \$1,000 per year rather than \$1,400 per year. BLM added this was not a reappraisal, but was a separate, independent appraisal for the initial term of the grant requested by BLM adjudicative personnel to ensure that information contained in the initial appraisal was not out of date.

2/ The described uses and their assigned values are: television and radio broadcast use-\$2,000; commercial communications use-\$1,400; common carrier microwave relay use-\$1,500; CATV receiver and radio/TV translator use-\$1,000; industrial and Governmental microwave or radio repeater use-\$1,000; and passive microwave reflector use-\$500.

The CTUA is, in essence, a market study which involved a multi-state review of rental data for telecommunication facilities. In the common carrier microwave relay use category, BLM examined 14 Colorado leases and 34 leases in other western states. In table form, BLM set forth for each lease the month and year of issuance; annual rental; time adjusted annual rental; term of the lease; rental readjustment frequency; access rating; power availability; single or multiple user location; size; whether urban or rural market; and topography (CTUA at 29-34). In a summary, BLM discussed the data set out in the table for each factor in the category and concluded:

A total of 48 leases in eight states ranged from \$19,600 to \$300 in this use group and averaged \$2475. Over half had a time adjusted rental between \$1000 and \$2500. Twenty-five leases in this mid-range averaged \$1756. More weight is given multi-state leases in this group due to the network systems broad regional geographic expanse.

All factors considered, the estimated annual fair market rental for a typical BLM or Forest Service permit for common carrier microwave relay use in Colorado is \$1500.

(CTUA at 28).

Subsequently, BLM issued its decision dated December 24, 1986, in which it determined that, in accordance with the reappraisal, the rental for the right-of-way would be \$1,500 annually for a 5-year period beginning August 17, 1987, and ending August 16, 1992. BLM afforded Mountain States 30 days from receipt of the December 1986 decision to object to the revised rental rate and request a hearing.

By letter of January 16, 1987, Mountain States requested a hearing. The Grand Junction Resource Area Manager, BLM, conducted a hearing on May 20, 1987, at which representatives for Mountain States and BLM appeared. Evidence and testimony offered at the hearing by Mountain States and BLM are briefly summarized in a June 5, 1987, memorandum to the file prepared by a BLM land law examiner, and an audiotape of the hearing is included in the case record.

By decision dated June 12, 1987, the Area Manager concluded that Mountain States should be assessed annual rental in the amount of \$1,500 for right-of-way C-16991. He stated that this figure "represents the fair market value of the rights Mountain States * * * has received to use the public lands for common carrier microwave relay use under the Colorado Telecommunications Use Appraisal of August 7, 1986." He required Mountain States to pay \$1,500 in rental charges for the right-of-way for the term August 17, 1987, through August 16, 1988. The present appeal is from that decision.

In its statement of reasons (SOR) for appeal, appellant principally contends that BLM's reliance on the rate schedule in the Master Appraisal ^{3/} in determining the appropriate rental for its communications site right-of-way constitutes a dramatic departure from the long-established and pre-ferred comparable lease method of appraisal. It argues that use of the Master Appraisal is contrary to FLPMA and its implementing regulations and was undertaken without adequate notice to and input from affected parties. It also criticizes the Master Appraisal for failing fully to identify the lease transactions relied upon.

Appellant concludes that proper application of the comparable lease method of appraisal, including reliance on other "comparable leases," results in a fair market rental value "substantially less than the amount determined by the BLM appraiser" (SOR at 3). ^{4/} Appellant requests that the Board reverse the June 12, 1987, decision and remand the case to BLM for a hearing to determine the validity of the appraisal. Id. at 10-11.

Prior to repeal of the Act of March 4, 1911, communications site rights-of-way issued pursuant to that statute were subject to rental charges calculated on the basis of the "fair market value" of the right-of-way, as determined by a BLM appraisal. 43 CFR 2802.1-7(a) (1975). ^{5/} Fair market value has been considered the amount "for which in all probability the right to use the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desires but is not obligated to so use." American Telephone & Telegraph Co., 25 IBLA 341, 349-50 (1976).

[1] It is well established that the preferred method for appraising the fair market rental value of non-linear rights-of-way, including communications sites, is the comparable lease method of appraisal where there is sufficient comparable rental data available and appropriate adjustments are made for differences between the subject site and other leased sites. Communications Enterprises, Inc., 105 IBLA 132 (1988); High Country Communications, Inc., 105 IBLA 14 (1988); American Telephone & Telegraph Co., 77 IBLA 110 (1982). The CTUA itself recognizes this:

Appraisal of fair market rental is best accomplished using the market comparison approach which relies on direct comparison with similar properties rented or leased for similar use. The Interior Board of Land Appeals has found the comparable lease method of appraisal to be the preferred method where sufficient comparable data is available. [Citing Full Circle, Inc., 35 IBLA 32 (1978).]

^{3/} Mountain States refers to the CTUA as the Master Appraisal.

^{4/} Although appellant has attached communication lease/purchase data to its SOR in support of this claim, it does not state what the proper rental should be. However, we note that at the hearing, Mountain States indicated that a fair market rent for the communication site would be \$1,000 per year and that a \$500 per year rate on passive microwave reflector use was acceptable.

^{5/} The standard for assessment of rental charges for a right-of-way under FLPMA has remained the same, i.e., the fair market rental value. FLPMA, § 504(g), 43 U.S.C. § 1764(g) (1982); 43 CFR 2803.1-2(a).

(CTUA at 5). The CTUA which is the basis for the appraisal of the rental value of appellant's right-of-way in this case has been involved in other appeals recently decided by this Board.

In another appeal brought by this same appellant from an appraisal of communications site rights-of-way in Colorado using the CTUA, we considered whether an appraisal of fair market rental value based on the data and conclusions presented in the CTUA constituted a record which would support the finding of fair market rental value. Mountain States Telephone & Telegraph Co., 107 IBLA 82 (1989). After noting that the CTUA was essentially a market study involving a multi-state review of rental data for various types of communication site facilities, which report arrived at an estimated fair market rental value for each of the several different categories of site referred to previously (see note 2, supra), the Board concluded that the CTUA did not provide a comparable lease method of appraisal. 107 IBLA at 87; see High Country Communications, Inc., supra. 6/ Analyzing the CTUA in some detail, we concluded that it failed to provide sufficient data and analysis regarding the leases reviewed in the report to enable either the appellant or the Board on administrative review to verify the comparability of the subject leases with those considered in arriving at the appraised value. 107 IBLA at 89-90. Hence, we remanded for further analysis of the fair market rental value. The same rationale is applicable in the present case.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is remanded to BLM for further action consistent herewith.

—
C. Randall Grant, Jr.
Administrative Judge

I concur:

Bruce R. Harris
Administrative Judge

6/ In High Country, supra, we noted that the range of annual rental values for comparable leases "is so wide as to make the concept of a 'typical' site of doubtful relevance." 105 IBLA at 17. Although that case involved the portion of the report dealing with commercial radio translator sites, the same observation can be made of the table showing annual rentals for microwave relay sites. See CTUA at 28.